

Commission's comprehensive rewrite of the 2.5 GHz band plan and associated rules, and by accelerating the evolution and deployment of new WiMAX-based wireless broadband services.<sup>335</sup>

## B. Discussion

123. This transaction will create major transaction-specific benefits by facilitating the development of a nationwide WiMAX network. The Applicants have shown that the merger can speed the arrival of a wireless broadband pipe that will increase competition and consumer choice, make possible new services, and promote the availability of broadband for all Americans. Sprint Nextel and Clearwire have also shown that these benefits are unlikely to occur without the transaction because they lack the nationwide footprint and capital needed to build the network. The combination of their license assets and investments in New Clearwire that will occur as a result of this transaction will address those problems. Unlike in many transactions, where existing operations will be combined, this transaction will facilitate the provision of a new, advanced WiMAX-based network throughout the country.

124. Furthermore, the transaction will facilitate the intensive use of the 2.5 GHz band, which will help EBS licensees and other stakeholders in the 2.5 GHz band. We note the enthusiastic support this transaction has received from educators.

125. The conditions we impose will maximize the public interest benefits resulting from this transaction. Our conditions concerning E911 and universal service serve important public policy objectives and ensure that the transaction will lead to public interest benefits. We also note that none of the parties who filed petitions and comments have identified any specific public interest harm that could result from this transaction.

126. Three *ex parte* commenters argue against the public interest benefits of a Sprint Nextel - Clearwire merger, stating that the underlying transfers have both a potential upside and downside and that the review process seems disadvantageous to the general public.<sup>336</sup> However, in their filings Bella Mia, PDQLink and PART 15.org all failed to adequately demonstrate how any potential disadvantages outweighed the benefits of this transaction to the public interest.<sup>337</sup>

127. We conclude that the transaction is in the public interest because it will facilitate the development of a nationwide WiMAX network and there are no corresponding public interest harms. Using the sliding-scale approach described above, we easily conclude that the benefits are sufficient to conclude that the transaction is in the public interest. Furthermore, we believe the conditions we have imposed pursuant to Sprint's and Clearwire's voluntary commitments will maximize the chances that public interest benefits will flow from this transaction.

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<sup>335</sup> See, e.g., WCA Comments; Joint EBS Comments in Support of the Proposed New Clearwire Transaction (filed Jul. 24, 2008).

<sup>336</sup> See PDQLink *Ex Parte* Request to Deny at 1-2; Bella Mia *Ex Parte* Request to Deny at 1-2; PART 15.org *Ex Parte* Request to Deny at 1-2.

<sup>337</sup> We also reject the arguments of those parties that our review of these applications was "rushed" or improper in any way. See PDQLink *Ex Parte* Request to Deny at 5; Bella Mia *Ex Parte* Request to Deny at 4-5; PART 15.org *Ex Parte* Request to Deny at 1-2. Our public notice seeking comment on the Applications provided the 30-day period for comments that we normally provide for commenting on major transactions. Furthermore, these commenters have not stated what additional information or analysis the Commission would need. PART15.org suggests that the Applicants should be required to meet an accelerated buildout schedule in order to ensure the spectrum does not lie fallow. See PART 15.org *Ex Parte* Request to Deny at 4. We find no transaction-specific basis for requiring any further acceleration of currently applicable buildout requirements. Although these parties failed to file timely comments, we have fully considered their arguments.

### VIII. CONCLUSION

128. As discussed above, we find that public interest harm is unlikely as a result of this transaction. We also conclude that there are significant potential public interest benefits and that a grant of the Applications would be in the public interest, convenience, and necessity.

### IX. ORDERING CLAUSES

129. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 309, 310(b), 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(b), 310(d), the applications for the transfer of control of licenses from Sprint Nextel Corporation to Clearwire Corporation are GRANTED, to the extent specified in this *Memorandum Opinion and Order* and subject to the conditions herein.

130. IT IS FURTHER ORDERED that the above grant shall include authority for Clearwire Corporation to acquire control of: (a) any Broadband Radio Service, Educational Broadband Service, Local Multipoint Distribution Service, or microwave license or authorization issued to Sprint Nextel Corporation and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

131. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses from Sprint Nextel Corporation to Clearwire Corporation filed by Rural Cellular Association and AT&T, Inc. are DENIED for the reasons stated herein.

132. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this *Memorandum Opinion and Order*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX  
COMMENTING PARTIES AND PETITIONERS**

**Petitions to Deny Filed by:**

Rural Cellular Association  
AT&T, Inc.

**Comments in Opposition Filed by:**

Bella Mia, Inc. (*Ex Parte* Request)  
Part 15 Organization (*Ex Parte* Request)  
Prime Directive Quick Link (*Ex Parte* Request)  
SouthernLINC Wireless  
Vonage Holdings Corporation

**Comments Filed by:**

Acadia Parish School Board  
Albion Community Development Corporation  
Albright College  
Anaheim City School District  
Archdiocese of Los Angeles  
Association for Continuing Education  
Atlanta Interfaith Broadcasters  
Blake Twedt/Broadband Spectrum Development III LLC/Broadband Mobile Data IV LLC  
Board of Governors of the Colorado State University System  
Calcasieu Parish School Board  
California Human Development Corp.  
Caritas Telecommunications  
Catholic Television Network  
CBeyond, Inc.  
Centimeter Wave Television, Inc.  
Chicago Instructional Technology Foundation  
Clarendon Foundation, Inc.  
Clarke County School District/Clarke Central High School  
Colorado Public Television, Inc.  
Comfort Independent School District  
Community Telecommunications Network  
Connecticut Public Broadcasting, Inc.  
Dallas County Community College  
Delta Band Service, LTD  
DigitalBridge Communications Corp.  
Diocesan Telecommunications Corp.  
Dr. Michael R. Kelley

Educational Broadband Corp.  
Escondido Union School District  
Florida Atlantic University  
Fortitude Ventures, LLC  
Franciscan Canticle, Inc.  
Gallaudet University  
Gasconade County R-1 Schools  
Georgia Institute of Technology  
Gryphon Wireless  
Hampton Roads Educational Telecommunication Association, Inc.  
Heritage Christian University  
Hispanic Chamber of Commerce  
Hispanic Information and Telecommunications Network, Inc.  
The Hubbard Family Trust  
ideastream  
IDT Spectrum LLC  
Illinois Institute of Technology  
Indiana Higher Educations Telecommunications System  
Innovative Technology Education Fund  
Jackson County School System/Board of Education  
Jefferson Davis Parish School Board  
Johnson & Wales University  
Junior College District of Metropolitan Kansas City, Missouri  
Knippa Independent School District  
La Roche College  
League of United Latin American Citizens  
Leeton R-X School District  
Level 3 Communications  
Louisiana Independent Higher Education Research Foundation  
Lowndes County Public Schools  
Mars Communications, Inc.  
Mississippi Authority for Educational Television  
Missouri Baptist College  
National Association of Women Business Owners (NAWBO®)  
National Educational Broadband Services Association  
Nederland Independent School District  
New Trier Township High School District 203  
Newburgh City School District  
NorCal Services for Deaf & Hard of Hearing (*late-filed*)  
North American Catholic Educational Programming Foundation, Inc.  
North Carolina Association of Community College Presidents  
Northeast Georgia RESA  
Northern Indiana Educational Service Center

Oregon Wireless Instruction Network/Oregon State University  
Oceanside Unified School District  
Okaloosa-Walton College Foundation, Inc.  
Oklahoma State University/Oklahoma Distance Learning Association  
Patrick J. Burns  
Point Pleasant Beach Board of Education  
Private Networks, Inc.  
Region IV Education Service Center  
Reorganized School District No. R-IV of Pettis County  
Richard P. West  
Rockne Educational Foundation  
Rockne Educational Television  
Round Top-Carmine Independent School District 78954  
Rutgers, The State University of New Jersey  
San Diego Community College District  
San Diego County Office of Education  
San Diego State University  
SCE Broadband FL, LLC  
SCE Broadband NW, LLC  
SCE Broadband, TX, LLC  
School District No. 1 in the City and County of Denver and the State of Colorado  
School District of Oakfield  
Shekinah Network  
Sioux Valley Wireless  
Springfield Local Schools  
St. Bernard Parish School Board  
St. Joseph's Church/Diocese of Orlando  
St. Louis Community College  
St. Norbert College  
Texas State Technical College – Harlingen  
Texas State Technical College – Waco  
The Board of Trustees of the Leland Stanford Junior University  
The Foundation for Excellence in Louisiana Public Broadcasting  
The Free State Foundation, Randolph J. May, President  
The Knowledge Network of Greater Omaha  
The Learning Paradigm, Inc.  
The Louisiana Educational Television Authority  
The Northern Arizona University Foundation, Inc.  
The School Board of Miami-Dade Florida  
The Source for Learning  
University of Central Florida  
University of Maryland  
University of Southern Indiana

US Pan Asian American Chamber of Commerce (USPAACC)  
Victoria Independent School District  
Views On Learning, Inc.  
Vista Unified School District  
Walton County School District  
Warren County R-3 School District  
Weld County School District RE-1  
Wellsville-Middletown R-1  
Weslaco Independent School District  
Wireless Communications Association International, Inc.  
Xanadoo, LLC

**Joint Opposition to Petitions to Deny Filed by:**

Sprint Nextel Corporation and Clearwire Corporation

**Oppositions to Petitions to Deny and Comments Filed by:**

Google, Inc.  
Intel Corporation  
The Source for Learning and the Indiana Higher Education Telecommunication System  
National EBS Association (NEBSA)  
Hispanic Information and Telecommunications Network, Inc. (HITN)  
Media Access Project Opposition to AT&T's Petition to Deny (*Late Filed*)  
Catholic Television Network  
Public Interest Spectrum Coalition

**Replies to Opposition and Comments Filed by:**

AT&T, Inc.  
Hispanic Information and Telecommunications Network, Inc.  
Rural Cellular Association  
Wireless Communications Association International, Inc.  
Motorola, Inc.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

Re: Applications of Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94; Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95; Applications of Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless for 700 MHz Band Licenses, Auction No. 73

Broadband and the advanced applications that it enables have become increasingly critical drivers of both economic and social development. With these three items, we take significant steps to advance the roll out of wireless broadband Internet access to consumers across the country, and promote long term investment in broadband infrastructure that will support increased innovation, expanded services and economic growth in the future. These items also advance networks that are more open to devices and applications, as we implement the open platform requirements of the 700 MHz C Block and approve a transaction that will advance the promises of New Clearwire to allow applications and devices of the consumers' choice on these networks. Taken together with our action today approving the use of the television "white spaces" for unlicensed wireless use, the future of wireless broadband is indeed bright.

These transactions will provide significant benefits to wireless consumers. Specifically Verizon will now be able to fill in holes in its coverage area and provide a more robust national wireless service to its customers. Notably, Verizon is required to divest overlapping areas, numbering more than 100.

With respect to roaming, the commitment proposed by Verizon Wireless to extend its roaming obligations provides added certainty to small and rural carriers. In addition, Verizon Wireless has made additional commitments with respect to continuing the Alltel GSM network and allowing carriers to choose which roaming agreement to continue. This should all help smaller, rural and regional carriers providing roaming to their consumers.

Consumers are also beneficiaries of a new entrant into the wireless market, Clearwire. This provider will enhance competition and solidify wireless as an additional broadband platform. Moreover, Clearwire committed to embrace more open networks, one open to all applications and devices. This approach will spur innovation and give greater choice and improved services to consumers.

I am also very pleased with the voluntary commitments made by Sprint Nextel and Verizon Wireless with respect to the Universal Service Fund and E911 location accuracy. With respect to E911, these companies have taken a leadership role in the industry and are following through on their promises to meet E911 location accuracy obligations at the county-level. This is an issue that is critical to consumers and first responders, and an issue that has been a priority to me as Chairman. This commitment will allow first responders to reach those in need more quickly, and find callers more consistently. This is clearly in the public interest.

With respect to USF, the phase-out of high-cost competitive ETC funding to these carriers will provide significant benefits to the fund, while also providing certainty to the carriers. High-cost support for competitive ETCs has grown rapidly over the last several years, placing extraordinary pressure on the federal USF. In 2001, high-cost universal service support totaled approximately \$2.6 billion. By 2007, the amount of high-cost support had grown to approximately \$4.3 billion per year. In recent years, this growth has been due mostly to increased support provided to competitive ETCs, which receive high-cost support based not on their own costs, but on the per-line support of the incumbent LECs. Competitive ETC support, since 2001, has grown from under \$17 million to over \$1.18 billion—an annual growth rate of over 100 percent. The offers made by the carriers here provide certainty for the carriers, while reducing the pressure on the fund over time.

Finally, I note that the industry has made considerable progress with respect to the issue of openness of devices and applications. With the issuance of Verizon Wireless's 700 MHz licenses the open platform obligations we imposed on the C Block become a step closer to implementation. The availability of third party handsets with the capability of downloading the applications of the user's choice will provide substantial opportunities and competitive pressure to ensure that the benefits of open platforms are realized. Moreover, coupled with the considerable openness plans that New Clearwire intends to include as it rolls out its new network and our action today on making available the white spaces, there is a ripe field for wireless innovation and growth.

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Sprint Nextel Corporation and Clearwire Corporation Applications For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94*

Today's item enables the creation of a new competitor in the broadband Internet access market. That's good news—really good news. Of particular importance—given the haunting economic times in which we find ourselves—the new company will have access to billions of dollars of capital to build out its new WiMAX network. This network will provide millions of Americans with an additional option in the market for high-speed fixed broadband access—which is currently a duopoly or worse between cable and phone companies. The new network will also provide millions of Americans with a new option for mobile broadband Internet access—also currently a duopoly or worse between incumbent providers. So this counts as very good news for American consumers.

Equally important, the new network we enable today will be contractually committed to important principles of openness. Device manufacturers, application developers and content providers will not need to seek permission to innovate from a centralized network operator. Companies that seek to improve their devices can simply install a WiMAX radio, or design their software or Website for use on a WiMAX handheld device, secure in the knowledge that customers of the new company will be able to use these products as their designers intended—and on a fast, widely-deployed and robust network. This evolution will continue the important work in encouraging openness that this Commission began in the 700 MHz auction. Indeed, the new company's commitment to providing wholesale access actually goes beyond our 700 MHz conditions. This too counts as very good news for American consumers and innovators.

Finally, today's item requires Sprint Nextel to meet important E911 location accuracy benchmarks and to open its books to ensure that its Universal Service Fund support is commensurate with its real costs of providing service. As I stated in my previous statement, these are two reforms that I have supported in other proceedings and I am glad that consumers will benefit from them here.

Despite my enthusiasm for today's Order, I must note one element that I would have preferred to handle differently. The Commission has a statutory duty to prevent undue consolidation in the wireless marketplace. A spectrum cap—or the far less robust "spectrum screen" that the Commission, over my objection, uses instead—is a critical tool to enforcing this policy. As I have stated before, I believe the right way to account for new bands that have been made available for advanced wireless services would be through a comprehensive, industry-wide proceeding that would establish appropriate rules for valuing the relative desirability of different spectrum. But we have not conducted such a proceeding. Instead, we simply raise the spectrum screen in an ad hoc fashion merger-by-merger. While I appreciate the willingness of my colleagues to fashion a spectrum screen for this transaction that somewhat reasonably (but far from perfectly) reflects the current marketplace realities, I think that a general rulemaking is still necessary and desirable and by far the better option.

Many thanks to the Bureau for their hard work on this item under demanding time constraints.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: In the Matter of Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent To Transfer Control of Licenses, Authorizations and Leases, WT Docket No. 08-94, Memorandum Opinion and Order.*

I join my colleagues today in approving the transfer of control applications filed by Sprint Nextel and Clearwire. Under this agreement, the entities will combine their next generation broadband assets to form a new entrant into the marketplace for mobile broadband service. Because the Applicants have demonstrated that this transaction will enhance competition within the relevant market and be of significant benefit for consumers, I approve this Order.

The Applicants' plans to deploy a nationwide mobile WiMAX network optimized for high-bandwidth data transfers will provide consumers with a new option for quality, high speed service, and will spur competition by adding an additional service provider for wireless broadband services. My support for this order is based on the significant public interest benefits arising from the development of this nationwide network and the potential for increased competition and consumer choice.

In any transaction, as mandated under Sections 214(a) and 310(d) of the Communications Act, the Commission must analyze the record evidence and determine whether the public will be better served by the transaction being approved or being denied. Thus, the Commission balances the potential public interest benefits against any public interest harms. The Commission always seeks to accelerate private sector deployment of advanced services, promote diversity of license holdings, maintain a high level of quality in communications services, and manage the spectrum in the public interest. Approval of this transaction between Sprint Nextel and Clearwire will allow us to uphold these key goals while being mindful of the rapidly changing nature of the technology and communications industries.

The Commission has closely examined whether this transaction is cause for competitive concern, and has found that no competitive harm would result regarding concentration in the markets that these companies serve. In concluding that this transaction will not increase market concentration in the product market for mobile broadband, the Order aptly considers that the resulting entity, New Clearwire, is a new entrant just at the beginning of the process of deploying next-generation networks based on WiMAX standards and not an established provider with significant build out. I believe we take the right course by recognizing that this is not a merger in which two established providers with spectrum holdings and facilities-based operations are merging, but rather a transaction in which one entity brings spectrum, facilities and customers to the table, while the other offers critical spectrum input. I am pleased that I was able to work closely with my colleagues to assess the potential competitive effects of the proposed transaction by properly and carefully delineating the appropriate market definitions and input market for spectrum.

Additionally, because our job is to assess whether the proposed transaction will advance the public interest, we have fully considered the public interest benefits that will flow from this transaction. In addition to a new nationwide broadband platform from which a nationwide WiMAX network will be deployed, the Applicants cite gains in operational efficiencies and a more intensive use of the 2.5GHz spectrum band allowing for coverage of 140 million people by the end of 2010. The Applicants contend that New Clearwire's planned development of WiMAX will serve as a new alternative broadband platform, and will spur competition with fixed broadband service that incumbent wireless broadband operators are providing, as well as developing technologies from other industry leaders. New Clearwire submits that its commitment to allow mobile virtual network operators on its network and to open its network for consumers to use devices and download applications, content and services, are benefits that

will flow directly to consumers in the form of enhanced competition and consumer choice.

Given our determination that this transaction is unlikely to result in competitive harm, and in light of the significant benefits consumers will reap as a result of this transaction, including increased competition, greater consumer choice and new services, I support this item in its entirety.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Sprint Nextel Corporation and Clearwire Corporation, Applications for Consent to Transfer Control of Licenses and Authorizations*

This order approves the transfer of licenses in a transaction involving Sprint Nextel, Clearwire, and a consortium of other companies that provide services across a variety of platforms – including Google, Intel Corporation, Bright House Networks, Comcast Corporation, and Time Warner. The resulting entity, New Clearwire, will be a provider of broadband services across a nationwide WiMax network. As I stated in my comments on the Verizon Wireless – Alltel transaction, when reviewing such deals, the Commission must balance the risks of anticompetitive harm to consumers against the potential for a variety of pro-consumer benefits. In this particular transaction, the weight of the evidence leans solidly to approval.

In reviewing the potential anticompetitive harm from a transaction, the Commission must consider the extent to which the merging parties are competitors, or may compete with each other in the future. As an emerging broadband provider, New Clearwire has few if any operational assets in place that compete with those of Sprint Nextel. Of course, over time, the wireless broadband service of one firm could compete with the other, which must be considered in evaluating the competitive effects of this transaction. But on the whole, given the nascent status of Clearwire and the relatively early stages of wireless broadband services, the competitive analysis is straightforward.

Indeed, I am hopeful that New Clearwire will become a textbook example of the “third pipe” – the much-anticipated wireless provider of broadband that competes with existing wireline and cable services. While all competition in the provision of broadband is welcome, New Clearwire claims that it will offer speeds up to 6 Mbps, which may be especially effective in encouraging faster speeds from wireline and cable providers, as well as wireless companies that may provide broadband. Accordingly, I am pleased to support this item.

I thank the staff of the Wireless Bureau for their review of this transaction and for all they do to ensure a competitive market in wireless services.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL  
CONCURRING IN PART**

RE: Sprint Nextel Corporation and Clearwire Corporation; Applications For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, FCC 08-259

I am very pleased to approve this transaction, which joins together two existing licensees to create a new entrant capable of injecting new and meaningful competition into the wireless broadband marketplace. Today's action paves the way for Sprint, Clearwire and other investors to partner to deploy a nationwide wireless broadband network in the 2.5 GHz band, something that these companies have not been able to accomplish individually. New Clearwire will possess the spectrum breadth and depth, technical expertise, and financial resources necessary to construct a nationwide wireless broadband network. By rationalizing the spectrum holdings of Sprint and Clearwire, New Clearwire is well-poised to create efficiencies, spread the substantial business risk, and raise the financing necessary to deploy a competitive mobile WiMax service that will deliver advanced wireless services to millions of American consumers.

I am pleased that today's order refrains from analyzing this application as if Sprint and Clearwire are currently competitors. Although the potential for such competition is there, this approach is not yet ripe given the nascent stage of the converged wireless broadband market. Moreover, New Clearwire is a market entrant competing against established players with large, existing subscriber bases. Similarly, with respect to our treatment of the 2.5 GHz spectrum, the Commission correctly recognizes that encumbrances and lease commitments make unworkable a simple megahertz-to-megahertz comparison of this band with other spectrum bands for purposes of our spectrum aggregation screen. In other words, we're properly comparing apples to apples.

I do not oppose the open access and wholesale commitments set forth in this order given that the parties offered this approach voluntarily and from day one. As I've said for some time, the private sector long ago recognized the weaknesses of walled garden business plans well before the Commission started to issue unnecessary mandates in this area.

I am, however, concurring in part due to the universal service condition imposed here. First, this condition is not merger-specific. In addition, while I may agree with some of the universal service policies contained in this order, I see no need to potentially prejudice the Commission's ongoing rulemaking on this important matter. This is especially the case given that I, along with three of my colleagues, have made public our commitment to wrap up our work on universal service reform no later than December 18, 2008. Moreover, the text of today's order is unclear as to whether our action today would be superseded by action in the universal service proceeding.

At the end of the day, the next two years present a unique window for New Clearwire to take advantage of its time-to-market opportunity. I congratulate the company and its investors. I look forward to the day in the not too distant future that WiMax and LTE will compete head-to-head.